& H. R. Co. v. Walsh and Moudou v. New York N. H. & H. R. Co. The last case was decided by the Supreme Court of Connecticut at the same time as the much discussed Hoxie case. It is difficult to understand why this decision and the appeal to the Supreme Court are not mentioned by Mr. Doherty, although the appeal was taken more than two years ago.

The remainder of the book, pages 276-316, deals with the Federal Safety Appliance Acts, the proper construction of which is directly within the scope of the book, since by the Employers' Liability Act the railroad is deprived of the defences of Assumption of Risk or Contributory Negligence if it appears that the violation of a safety appliance statute contributed to the injury or death of the employee. This is a most important branch of Mr. Doherty's subject and many cases have been decided by the Federal Courts which would warrant discussion, classification, and criticism by him. On page 276 he gives a list of sixty-seven decisions in actions for injuries or death, construing the Safety Appliance Acts. We find only twenty-seven of these cases discussed or commented on by him elsewhere. It is unfortunate that the author did not devote to the important and unsettled questions involved in these cases some of the time and space used by him in connection with the constitutionality of the Act.

The index, a most important feature of a legal text-book, while passable, is not at all thorough, and does not show the result of very painstaking work.

On the whole, the book is interesting and worth having. It is to be regretted that all parts of it are not so carefully prepared or reliable as the author's evident ability might, with the addition of a little more time, readily have made them.

H. S. D., Jr.

THE INDIVIDUALIZATION OF PUNISHMENT. By Raymond Saleilles, Professor of Comparative Law in the University of Paris. Translated from the Second French edition by Mrs. Rachael Lzold Jastrow. Little Brown & Co. Boston. 1911.

This is the fourth, and the most valuable, contribution yet made by the Committee on Translations of the American Institute of Criminal Law and Criminology in its work in making available to the American student the work of the great foreign authorities on criminology.

Our author's work divides itself into four topics: The history of punishment; a review of the different schools of criminology; the doctrine of responsibility; and a plea for individualization in punishment. In many respects the review of the schools of criminology is more enlightening than a study of the books in which the theories of the schools themselves are set forth, for these theories are treated with eminent fairness and at the same time the reader is given an acute critique of them.

The chapter on the history of punishment is most interesting; not because of any new facts presented, the author does not undertake to present any new facts, but because of the analysis of the facts to show the theory underlying them. From these facts he concludes that primitive punishment was primarily subjective; it was the crime that was punished, not the criminal. There is absent not only individualization, but the conception of moral culpability; there is no theory of punishment, the penalty is for compensation merely. It is the Ecclesiastical law that brings in the idea of responsibility and its resultant culpability.

Very acute and interesting also is his analysis of the reforms of the eighteenth century as represented by the work of Baccaria, in Italy, Bentham, in England and Feuerbach, in Germany, by which under the guise of a philosophic theory they harked back, in effect, to the primitive conception that underlay the Weregild.

The different schools of criminology are taken up in turn, and their

advantages and defects considered. The classic school, with its eighteenth century philosophy of crime; the Neo-classic school, with its assumption of free will, and individualization based on responsibility; the Italian school, and individualization based on formidability.

The two chapters, on the Doctrine of Responsibility, and Responsibility and Individualization, contain the meat of the book; on the ground work laid there, the conclusions reached and applied by our author in the remainder of the book are based. It is this part of the book in particular that justifies Tarde, the great philosopher, in saying of our author: "M. Saleilles presents two qualities rarely combined: the didactic subtlety of the jurist and the keen analysis of the psychologist and criminologist." Though probably the jurist would not apply the characterizations in the same way M. Tarde does.

It is in these chapters that M. Saleilles embodies his greatest contribution to the science of criminology. In them he essays the role of a mediator between the two schools of criminologists; those who base their conclusions on the postulate of freedom of will, and those who reject the idea of moral responsibility based on free will. M. Sailelles would reconcile these two schools by retaining the idea of freedom of will, as a basis of moral responsibility, but rejecting it as a basis of punishment. His conclusions may be summed up thus: The conception of responsibility should be retained and incorporated with that of punishment; without it the criminal is a creature despised, ostracised, abnormal and even monstrous; with it self-esteem remains, or at least may be regained. The possible criminal, *feeling* himself free (our author does not say he is free) in his actions, is conscious of his power to act rightly as well as wrongly. It is therefore a valuable moral lever which should not be dispensed with. But while penalty for crime is thus justified by responsibility, it should not be measured by it.

Penalty must be apportioned to the subjective criminality. This subjective criminality presents two aspects, first a latent and passive criminality in the static condition—which is one with the essence of character—second the active dynamic criminality considered as a psychic factor which on occasion sets free an impulse which in turn breaks out into action. The criminality thus made manifest—the sum of the will and the character made manifest in an action—constitutes the crime.

But when we come to determine the discipline of the punishment we should no longer consider the particular variety of criminality inherent in the act; character must determine the discipline. The nature of the punishment should be determined by the passive criminality in its latent or passive condition, that is by the character.

Taken as a whole the work is one that every one interested in the scientific improvement of criminal law and criminology should read.

W. E. M.

THE SHADOW MEN. By Donald Richberg. Chicago: Forbes & Co. 1911.

Under the happy title of "The Shadow Men," Mr. Richberg has contributed his mite to literature in the shape of a novel advertised as being "of interest to lawyers." This contention will not be disputed, but the publishers should add, "and to bankers, brokers, scientists, gentlemen of leisure and others who have sufficient feeling for this little world of ours to be interested in its social development." Of actual law there is not one page or line, and we must seek the reason for the advance notice in the fact that the conditions exposed by Mr. Richberg can only be remedied by public opinion through the medium of the law.

By the term "Shadow Men" is meant the men higher up—the vague uncertain figures behind the great corporations to whom may be attributed the